

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. **20554**

In the Matter of	)	
	)	
Telecommunications Relay Services	)	
and Speech-to-Speech Services for	)	CG Docket No. 03-123
Individuals with Hearing and Speech	)	
Disabilities	)	
	)	

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COMMENTS OF SPRINT NEXTEL

Sprint Nextel Corporation (“SprintNextel”), on behalf of the Telecommunications Relay Service (“TRS”) operations of its subsidiary, Sprint Communications Company L.P., hereby respectfully submits its comments on the annual payment formula for TRS services filed by National Exchange Carriers Association in the above-referenced docket. *See Public Notice* DA 07-1978 released May 2, 2007.

- A. Consistent With Fundamental Principles of Administrative Law, The Commission Cannot Adopt Any Of The Myriad Of Rates Put Forth By NECA Using Formulas Not Adopted By The Commission.

NECA’s instant filing provides even more additional evidence that the framework for establishing the compensation rates to be paid to Relay providers is dysfunctional. Instead of setting forth one rate for each service based upon the methodology adopted and approved by the Commission, NECA has taken it upon itself to also propose “alternative provider payment formulas.” NECA’s Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, filed May 1, 2007 (NECA Annual Submission) at 1. NECA states that these alternatives “are based on suggested alternative methodologies,” *id.*, proposed by the Commission in its *Further Notice of Proposed Rulemaking (Rate Methodology FNPRM)* issued

in July 2006 in this proceeding.’ However, it is a fundamental tenet of administrative law that until an agency actually adopts a proposal modifying current rules or policies, the currently effective rules policies are to be followed. Stated differently, NECA’s recommended rates must be based on the methodology that the Commission has adopted and not how that methodology may be changed sometime in the future when the Commission decides the issues in the *FNPRM*.

For example, the Commission cannot adopt any of the rates proposed by NECA that exclude either marketing expenses, outreach expenses or both types of expenses. Although the treatment of these types of expenses in setting rates for TRS services is one of the issues being considered in the *Rate Methodology FNPRM*, 21 FCC Rcd at 8393,733 (asking for comment on the “extent to which marketing and outreach should continue to be compensated by the Fund), until that issue is decided, the only rate that can be lawfully adopted is one that includes both of these expense categories. In fact, it would raise an unconstitutional takings issue if the Commission were to adopt NECA’s proposal to exclude outreach costs since “[t]he Commission’s rules require TRS providers to engage in outreach activities to ensure that callers in their service area are aware of the availability and use of all TRS services.” *Id.* at 8393 734 (internal quotation marks and footnote omitted).<sup>2</sup>

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<sup>1</sup> *Telecommunications Services for Individuals with Hearing and Speech Disabilities*, 21 FCC Rcd 8379 (2006).

<sup>2</sup> This, of course, is not the first time NECA sought to exclude such outreach and marketing costs. Last year NECA proposed eliminating all marketing and advertising expenses submitted by TRS providers, even though such costs had previously been included in the determining the rates of compensation for each TRS service. Interstate Telecommunications Relay Services Fund Payment Formula and Fund Size Estimate, filed May 1, 2006 by NECA at 8. The Bureau decided to restore these costs since the definition of Outreach costs expenses and the definition of Marketing/Advertising costs in NECA’s Data Collection Form and Instructions are so similar as to have created confusion among providers as how to assign costs to these expense categories. *2006/2007 TRS Fund Order*, 21 FCC Rcd 7018 (2006).

There is also no justification for NECA's proposal to base TRS rates for the upcoming July 2007 through June 2008 fund year on the basis of historical costs.' The Commission has not sanctioned this method for setting future rates TRS and of equal importance it is inconsistent with rate making processes adopted by the Commission in other contexts. *e.g.*, TELRIC pricing for unbundled network element rates

In short and as matters stand now, the only rates that the Commission can lawfully adopt for the upcoming 2007-2008 Fund year are those based on the providers' projected costs and demand submissions. Of course, should the Commission issue a decision in the *Rate Methodology Rulemaking* either before or during the Fund year, it can establish rates on a going-forward basis consistent with whatever methodologies it adopts. But until it issues a decision changing course, the rates for the upcoming Fund must be based on the current methodology adopted by the Commission.

**B. The Commission Must Reject NECA's Proposed Disallowance of Sprint Nextel's Indirect Costs.**

NECA has again recommended that the Commission disallow a portion of Sprint Nextel's indirect costs based on a simple and simplistic comparison.<sup>4</sup> For example, NECA states that it disallowed a portion of Sprint Nextel's indirect costs allocated to traditional TRS service because "the relationship of [Sprint Nextel's] Indirect Expenses to the sum of the

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<sup>3</sup> Presumably the costs used were those reported for calendar year 2006. NECA states that it adjusted the rate by an inflation factor but does not specify the factor used. It is also unclear whether NECA adjusted the "historical cost" rate for increases in demand. If not, the carriers would be under-compensated since, in a labor intensive industry like TRS, increases in demand lead inevitably to increases the providers' costs.

<sup>4</sup> In its submission to the Commission for the 2006/2007 Fund year, NECA, using what can only be reasonably viewed as an "apples-to-oranges" comparison, recommended that a portion of Sprint Nextel's indirect costs be disallowed. The Consumer and Government Affairs Bureau accepted such recommendation and Sprint Nextel has petitioned for reconsideration of that decision. The Commission has yet to issue a decision on Sprint Nextel's petition.

Communications Assistant and Relay Center Operations expenses for one provider was four times higher than that reported by other providers.” NECA Annual Submission at 12. However, NECA provides no information as to whether it undertook a detailed analysis of the indirect cost submissions of the providers to ensure that they all included the same types of costs in the indirect expense reported on Schedule C. If NECA did not, its comparison here would clearly be unreasonable.

In its petition for reconsideration of the *2006/2007 TRS Fund Order*, Sprint Nextel explained why NECA’s decision to disallow Sprint Nextel’s costs could not be deemed valid. It pointed out that there were several legitimate reasons as to why Sprint Nextel’s ratio of indirect costs to the sum of its Communications Assistant (“CA”) and Relay center operations expenses could be higher than other providers. For example, other providers may have assigned the salaries and benefits of their employees engaged in the outreach or marketing/advertising activities to those categories in Schedule D. Sprint Nextel did not do so because there are no instructions as to how Relay providers are to assign these expenses and because Sprint Nextel’s TRS employees are engaged in activities to educate/promote Sprint Nextel’s intrastate TRS offerings as well as contract management. Rather, Sprint assigned these expenses to Schedule C which includes all of Sprint’s administrative costs, *i.e.*, its indirect costs, of providing TRS service.’ Assigning similar costs to different categories skews any cost comparisons among the providers.

Similarly, NECA’s comparison would be inapt if, unlike Sprint Nextel, other providers do not have an Engineering team devoted to their provision of TRS offerings and, instead,

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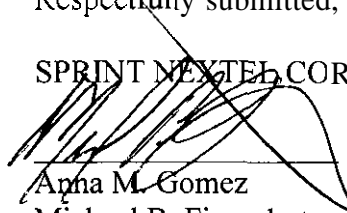
<sup>5</sup> Prior to the 2006/2007 Fund year order, Sprint Nextel’s assignment of all of the salaries and benefits of its employees within the TRS group in the indirect expense category on Schedule C met with NECA’s and the Commission’s approval.

outsource such functions. A provider that outsourced the engineering function may have decided to assign its outsourcing costs to the "Telecommunications Expenses" direct expense category in Section B instead of to the "Engineering" category in Section C.

Like at year, NECA did not ask Sprint Nextel for an explanation of the costs that Sprint Nextel assigned to the indirect expense category in Schedule C. Had it done so, Sprint Nextel would have explained its cost assignments and pointed out that NECA (as well as the Commission) have previously accepted such assignments as reasonable. The end result was that NECA, relying upon a questionable comparison, decided that Sprint Nextel's indirect costs for traditional TRS service were higher than those of other providers and thus excluded a huge chunk of those costs. Plainly, the Bureau should restore Sprint Nextel's indirect costs that NECA unjustifiably excluded.

Respectfully submitted,

~~SPRINT NEXTEL CORPORATION~~



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